



Job Rec'd PCT/PTO 25 JAN 2002

22899N2PCT/US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

USA PCT National Stage Patent Application  
PCT/EP99/01809 filed March 18, 1999

Klaus Fieback, et al

Serial No.: 09/674,431

First Submission filed October [28 sic.] 27, 2000

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OFFICE OF PETITIONS

PCT LEGAL OFFICE  
PCT LEGAL EXAMINERS  
Rafael Bacares  
Richard Cole

05 FEB 2002

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CERTIFICATE OF MAILING AT END  
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Hon. Commissioner of Patents and Trademarks  
Washington, D.C. 20231

S I R :

RENEWED PETITION UNDER 37 CFR 1.10(d) TO ACCORD A FILING DATE  
AS OF THE DATE OF DEPOSIT AS "EXPRESS MAIL" AND  
REQUEST FOR CORRECTION OF FILING RECEIPT, AND IF NECESSARY  
PETITION FOR WAIVER OF RULES

This is a request for reconsideration on the merits of the  
Decision on PETITION UNDER 37 CFR 1.10(d) dated November 2, 2001.


On December 19, 2001 applicants through their attorney, the  
undersigned, attempted to complete the requirements of point (3)  
page 2 in the Decision on the Petition under 37 CFR 1.10(d), by  
requesting the USPS Express Mail receiving clerk identified by  
initials KK at FDR USPS station (identified as PO Zip Code 10022)  
to sign the enclosed corroborating original Declaration. Attorney  
gave the Declaration to Ms. Kawai Ken the USPS clerk who having  
knowledge of the facts said that she would sign the Declaration.  
However it was taken from her by Mr. Winston E. Walter who said  
he was the supervisor of the section. He looked at it and told  
her not to sign the Declaration. He wrote his name and title on  
the enclosed original corroborating Declaration.

Later the same day December 19, 2001, attorney brought another Express Mail envelope to the FDR USPS station for mailing. It was accepted by the same postal clerk who signed by initials KK the receipt in question in the Decision on PETITION UNDER 37 CFR 1.10(d), as may be noticed by the same handwritten initials KK in the Acceptance Clerk's Initials box on the Post Office to Addressee Express Mail Mailing receipt (copy enclosed herewith) of this other Express Mail Mailing envelope. By comparing the handwriting of the initials KK on both receipts, this evidence establishes that the postal clerk with initials KK is a US postal clerk at the FDR station (zip code 10022) of the USPS and is the same Express Mail USPS clerk who wrote the original USPS postal clerk receipt in question (said original having been filed on July 5, 2001 with applicants' PETITION UNDER 37 CFR 1.10(d)). These original receipts for both Express Mail envelopes and the above evidence should be satisfactory as corroborating evidence from the USPS. It shows that the original receipt in question was written by a USPS postal clerk with initials KK (at FDR or Zip Code 10022 USPS station), and that the USPS holds her out as such allowing her to receive deposited Express Mail Mailing envelopes and to give receipts for them, and that she received and accepted both these envelopes, wrote the receipt in question dating it 10/27/00 and initial-signed it KK on the receipt in question specifically that she accepted the Express Mail mailing envelope that is: "EJ450233984US was deposited at FDR 10/27/00 11:50 PM" which she signed as KK. By the law of agency she is or at least is held out by the USPS as a USPS clerk, and any receipt she gives is to be considered an official USPS receipt particularly in absence of her being able to give usual Express Mail Mailing receipts by being restricted by the USPS from giving usual Express Mail Mailing receipts. Attorney on October 27, 2000 asked USPS clerk KK (Ms. Kawai Ken) for the usual Express Mail mailing receipt but Ms. Ken refused saying the usual receipt must be processed elsewhere in the post office, but she assured the

undersigned that it would be given the same date-in date as the actual date deposited with her namely October 27, 2000 and it would be sent to attorney later. The receipt in question was the only receipt she would give attorney. However to the contrary of her assurance the date-in date on the Express Mail mailing receipt later sent to attorney had the incorrect next day's date of October 28, 2000.

The above statements are made by attorney in the form of a Declaration of first-hand facts: Since attorney personally took both envelopes and Declaration to said USPS station and made the requests to clerk KK. This petition is urged to be granted. If a strict application of the rules lead to not granting the petition, request is made to waive the rules because under the above facts and circumstances the 37 CFR 1.10(d) and related rules have a defect in that they can lead to the USPTO ascribing an incorrect filing date, simply by actions of the USPS.

Respectfully submitted,  
Klaus Fieback et al

by:   
MARTIN A. FARBER  
Attorney for Applicants  
Registered Representative  
Registration No. 22,345

CERTIFICATE OF MAILING UNDER 37 CFR SECTION 1.8(a)

I hereby certify that the accompanying Petition, is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner of Patents & Trademarks, Washington, D.C. 20231, on December 31, 2001.

Dated: December 31, 2001

  
Martin A. Farber

866 United Nations Plaza  
New York, NY 10017

FIEBACK  
09/674,431

EJ 450 233 984 US



WAS DEPOSITED AT FDR

10/27/00

11:50 PM

KK

Winston E. Walker  
Supervisor  
12/19/01

I Kwai. Ken am a USPO postal clerk at FDR US post office station . I wrote the above receipt stating that the envelope containing the Express Mail EJ450233984US was deposited at FDR US post office station on 10-27-00.

I hereby declare that all statements made herein of my knowledge are true and are believed to be true and were made with knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code § 1001 and that such willful false statements and the like may jeopardize the validity of this document.

Kwai. Ken

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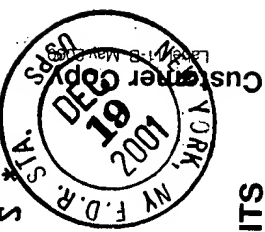
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